

THE EFFECTIVE DATE OF THIS ORDINANCE IS DECEMBER 3, 2009

ORDINANCE NO. 09-04-508

OPINION, FINDINGS AND ORDINANCE
OF
THE BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND

RE: URBANA OFFICE RESEARCH CENTER MXD

OPINIONS/FINDINGS

In Ordinance No. 98-18-220, the Board of County Commissioners of Frederick County, Maryland ("BOCC") granted the application of Fairview Properties, Inc. to reclassify 211.6 acres of land, more or less, from the Office/Research/Industrial (ORI) zoning classification to the Mixed Use Development (MXD) floating zone. In granting the requested zoning reclassification, the BOCC imposed 7 conditions:

1. Additional traffic analysis shall be conducted at the time of preliminary subdivision review for the commercial area to determine if the road network is sufficient to handle the commercial uses. This analysis must also address the timing for the construction of the new ramp from I-270.
2. No structure over two (2) stories shall be permitted until the Urbana Fire Company has the capability to handle fire and rescue situations on multi-story buildings.
3. To ensure compatibility with the MXD and to minimize potential conflict with the PUD town center, the Planning Commission must approve the type of commercial retail uses as part of site plan approval.
4. The architectural design theme of the commercial core and entertainment complex must be submitted to the Planning Commission for review and approval prior to any site plan approval.

5. Construction of the initial phase of the employment area must occur prior to or concurrent with the construction of the initial commercial (retail/entertainment) uses.
6. The following four design conditions proffered by the applicant must be complied with as a condition of the approval of this MXD floating zone regardless of ownership changes:
 - a. The vision which the applicant has formulated for its MXD development is based on a grid street layout and circulation pattern, creating pedestrian scale city blocks in the Commercial Services Core (Land Bay 4) of the project, with a loop collector roadway system at the perimeter to provide the ability to by-pass this core when traveling to and from relocated Maryland Route 80 and the Southern Employment Campus (Land Bays 5, 6 and 7). While the applicant desires to retain as much flexibility as possible at this early stage of the site planning and development marketing processes, this basic roadway and pedestrian scale layout shall be a binding condition of this MXD approval.
 - b. As a corollary to condition 6a, above, the applicant shall comply with the following conditions to control the size of users within the Commercial Services Core (Land Bay 4):
 - i) Except for the entertainment facility, no single user building will have a footprint greater than 50,000 square feet.
 - ii) At least 50% of the total square footage of the retail core development (exclusive of the entertainment facility) will be devoted to single use tenants which are 10,000 square feet or less in footprint.
 - c. The proposed pedestrian spine connections linking the employment land bays with the Commercial Services Core (Land Bay 4) will be maintained throughout the development of the MXD.
 - d. The applicant's architectural theme of pedestrian scaled, street front retail will be maintained throughout the development of the Commercial Services Core (Land Bay 4) of the MXD.
7. The applicant's revised phasing schedule of 10,000 square feet minimum initial office construction in conjunction with the retail usage shall be part of this approval.

Urbana Corporate Center, LLC, current owner of the property has requested the BOCC amend the Phase I plan of the Urbana Office/Research Center MXD in order to re-orient and increase the amount of commercial uses in the development. The property is located south of Maryland Route 80, west of Maryland Route 355 and east of I-270 at the Urbana interchange in the Urbana planning region, and immediately south of the Villages of Urbana development.

The Frederick County Planning Commission considered the request at a public hearing on November 19, 2008, and recommended approval with twenty-two conditions.

Two public hearings were held before the Board of County Commissioners on January 6, 2009 and January 13, 2009. The public had an opportunity to comment on the proposed Ordinance at these public hearings.

The MXD zoning district is a floating zone for the purpose of providing for a compatible mixture of commercial, employment, residential, recreational and civic/cultural uses which are planned as a unit.

The applicant has requested an amendment to the Urbana Office Research Center MXD Phase I Plan. Although the physical arrangement of buildings, structures, roadways and parking areas on the site have been redesigned to allow for an additional 78,700 square feet of commercial uses, the MXD proposal continues to be one in which employment uses (office/research) surround a central retail core. A regional retail outlet center is now planned for the commercial core, replacing the original concept that included retail, lodging and entertainment uses.

The differences between the proposal approved by the BOCC in 1998 and the current proposal are reflected as follows:

<i>Proposed Land Use</i>	<i>Acres</i>		<i>Percent of Gross Acreage</i>		<i>Zoning Requirement</i>
	<i>1998 Approved</i>	<i>2008 Proposed</i>	<i>1998 Approved</i>	<i>2008 Proposed</i>	
Employment	92 ac.	81 ac.	45%	40%	No area requirement
Commercial	52 ac.	68 ac.	25%	33%	Less than 45% of gross project acreage (w/o floodplain)
Recreational	9 ac.	0 ac.	4.5%	0 ac.	Compatible with proposed uses
Civic	1 ac.	1 ac.	0.5%	0.5%	Compatible with proposed uses
Open Space	28 ac.	31 ac.	14%	15%	Minimum 20% of Emp/Comm uses (29.8 acres)
Dedication/Right-of-Way	23 ac.	24 ac.	11%	11.5%	As required
Total (Gross Acreage exclusive of floodplain)	205 acres	205 acres	100%	100%	Minimum: 50 acres

The MXD site is part of a larger 334 acre area, the remainder of which lies to the east and is currently zoned ORI. The Fannie Mae Data Center is located on the north central end of the MXD site. This 220,000 square foot facility is the only existing development on the site. This facility is part of an approved site plan for a 37 acre Fannie Mae sub-area contemplating up to 720,000 square feet of office uses.

The infrastructure needed to support development of the MXD has been systematically established on or adjacent to the site since the original rezoning in 1998. Water and sewer trunk lines and internal roadways were installed to serve the Fannie Mae facility. Construction of the Fannie Mae facility satisfied the condition of the 1998 ordinance that the first phase (10,000 sq. ft.) of employment uses be constructed prior to, or concurrent with, the retail development.

Based on all the evidence submitted in this case, the BOCC makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Md. Ann. Code, Art. 66B, § 4.05(a):

1. POPULATION CHANGE. The revised MXD proposal does not include a residential component. Accordingly, there will be no impact on the population in the area.

2. AVAILABILITY OF PUBLIC FACILITIES.

A. SCHOOLS

The revised MXD proposal does not include a residential component. Accordingly, there will be no impact on schools.

B. FIRE AND RESCUE SERVICES

Fire and rescue services are provided by the Urbana Volunteer Fire Company located approximately one mile to the north of the MXD. No improvements are planned in the Urbana area, although it is noted that in the years since the original rezoning of the MXD, the Urbana Volunteer Fire Company has acquired the ability to respond to multi-story fires.

C. POLICE SERVICES

The site is served by the Frederick County Sheriff's Office and the Maryland State Police. A Sheriff's Office substation is planned in the Green Valley area near the intersection of Maryland 75 and Maryland 80.

D. PARKS AND RECREATION FACILITIES

The Urbana Community Park is located approximately one mile north of the site at Lew Wallace Road and Maryland 355. The Urbana District Park is located on the east side of Maryland 355 at the north edge of the Villages of Urbana and is under development by the Frederick County Parks and Recreation Division.

E. LIBRARIES

The Urbana Regional Library is located in the Urbana Town Center commercial district off of Worthington Boulevard.

F. WATER AND SEWER

The site is currently classified as follows:

Water Service

- W-1 Fannie Mae site (including lands for additional 500,000 s.f. of facilities)
- W-3 DEV Remainder of MXD site

Sewer Service

- S-1 Fannie Mae site (including lands for additional 500,000 s.f. of facilities)
- S-3 DEV Remainder of MXD site

The developer extended water and sewer trunk lines to serve the development of the entire MXD site as part of the construction of the Fannie Mae facility. The developer is to construct the Northern Regional Sewer Pumping Station and the Regional Water Tower (II) as part of Adequate Public Facilities Ordinance (APFO) approval.

It appears that infrastructure improvements needed to allow development of the site as proposed are either in place, under construction or under design. These infrastructure improvements will provide adequate public facilities to serve the proposed use.

G. SUMMARY

Public Facilities are, or will be, available to serve the proposed development.

3. PRESENT AND FUTURE TRANSPORTATION PATTERNS.

- **Current Site Access Characteristics and Comprehensive Plan Designations Of Major Roads In Vicinity**

Primary access to the site would occur via two entrance/exits on MD 80 (Minor Arterial) and a future access point onto MD 355 (Major Arterial). Much of the regional traffic drawn to the site is projected to access the area via the MD 80 Interchange (Urbana Interchange) of I-270. Connections to the site from within the Urbana community would likely occur via Sugarloaf Parkway/Urbana Parkway, and when completed, via the eastward connection to MD 355 across the ORI-zoned lands proposed for employment uses.

- **Traffic Generation**

Urbana ORC MXD Estimated Trip Generation Based on <i>Wells & Associates</i> Trip Equivalence Analysis August 19, 2008	Urbana ORC MXD AM Peak Hour Trips		Urbana ORC MXD PM Peak Hour Trips	
	<i>1998 Approved</i>	<i>2008 Proposed</i>	<i>1998 Approved</i>	<i>2008 Proposed</i>
	1,672 trips	1,672 trips	2,238 trips	1,904 trips

Analysis:

The I-270 interchange at MD 80 (Urbana Interchange) is projected to serve the majority of regional visitors to the MXD via the I-270 (northbound) slip ramp being developed and built by the applicant. This ramp will provide direct access to the site by way of the two MD 80 roundabout intersections handling east-west traffic movement in the Urbana community. A 'free right' turn into the site from the MD 80/Bennett Creek Avenue roundabout would provide for efficient movement into the site while both roundabouts would provide MD 80 access for

those leaving the site. The addition of the MD 355 access from the eastward extension of Urbana Parkway would provide an important alternate or local access to the site perhaps geared more to the employment users of the MXD.

The traffic study prepared by the applicant for this amendment application identifies a significant reduction in PM Peak Hour trips primarily through the elimination of the entertainment use and various reductions in pass-by and internal trips on the site. Actual buildout of parcels in the vicinity of the MXD have also been taken into account.

Generally it appears that surrounding road improvements have been completed (or are underway) that anticipate the proposed use of this site for a mix of employment and retail uses. However, the applicant should make a greater effort to illustrate the non-vehicular connections between this MXD site and the Urbana Community – primarily, the Villages of Urbana PUD and the historic Urbana village area.

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA

The zoning designation of the subject site – MXD – remains unchanged. The Applicant requests only an internal realignment of the uses and an increase in the amount of commercial square feet. The Fannie Mae facility remains the sole existing development on the site. As contemplated at the time the original MXD zoning was granted in 1998, the adjacent Villages of Urbana has developed.

5. RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION.

The Frederick County Planning Commission recommended approval of the application with twenty-two conditions. Planning staff concurs with the FcPc recommendation and has recommended two additional conditions.

6. RELATIONSHIP WITH THE FREDERICK COUNTY COMPREHENSIVE PLAN.

The underlying ORI land use designation and existing MXD zoning provide consistency with the proposed amendment to the approved Phase I plan. Plan and ordinance consistency have not changed since the initial approval in 1998, and nothing presented in the application compromises this consistency.

7. SUMMARY OF FINDINGS.

- **Consistency With The Comprehensive Plan and Zoning Ordinance**
The underlying ORI, Office Research Industrial land use designation and existing MXD zoning provide consistency with the proposed amendment. Plan and ordinance consistency has not changed since the initial approval in 1998 and nothing presented in the application compromises this consistency.
- **Compatibility With Existing And Proposed Development**
The proposed amended MXD application remains fully compatible with existing and proposed development in the vicinity.
- **Physical Characteristics**
The MXD proposal respects the natural conditions on the site and furthermore uses the topography to great advantage in configuring the proposed development.
- **Population Change**
No population change is anticipated with the full development of the MXD as no residential uses are proposed.
- **Adequacy Of Public Facilities And Services**
Public facilities are either adequate in their present state, or conditioned through the APF Letter of Understanding (July 2003) and the recommended conditions of approval in this report. All necessary remaining improvements are the responsibility of the developer.

- **Present And Future Transportation Patterns**

Much of the transportation network necessary to serve this MXD has been constructed in support of the PUD. The remaining improvements such as the I-270 slip ramp and MD 80 road widening are underway. Development of the site is conditioned upon completion and adequacy of these improvements.

- **General Consistency With The Original 1998 MXD Conditions**

The proposed MXD amendment remains generally consistent with conditions set forth in the original August 4, 1998 MXD approval, Ordinance No. 98-18-220. Prior approved conditions that have been satisfied include those making reference to:

Minimum amount of employment uses (10,000 sf) constructed prior to, or concurrent with the development of the commercial uses (conditions #5 & #7); and,

Fire and rescue capabilities of Urbana Fire Company (condition #2).

Based on all of the evidence submitted in this matter, the Board of County Commissioners determines that this amended project concept is both feasible and desirable. The Board determines that the proposed Phase I plan amendment complies with the purposes of the MXD classification and will further these purposes. The Board finds that the proposed amended Phase I plan is compatible with adjoining land uses and will have no significant adverse impacts. The Board finds that the proposed amendment is in the public interest. The Board finds that the required conditions are related both in nature and extent to the impact of the proposed development.

The Board hereby establishes that the maximum permitted land use percentage for commercial uses is thirty-three percent (33%). No residential use shall be permitted on the MXD zoned land so that the maximum permitted residential use is zero percent (0%). The remaining property shall be used for employment, recreational, civic, open space, roadways or other permitted land uses in the MXD zone.

The proposed amended Phase I plan will be granted subject to the following conditions.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, the amendment to the Phase I plan in Rezoning Case No. R-98-01(A) is hereby **GRANTED**, subject to the following conditions¹:

GENERAL:

1. In order to minimize conflicts with commercial uses in the PUD town center, the Planning Commission must approve the general type of commercial retail uses as part of the site plan approval.
2. Land Bays 5A, 5B, 6A, 6B, and 7 shall be illustrated and identified on all application materials as a single Mixed Use area, to be designated as Land Bay 5, in order to provide maximum flexibility for the applicant and Planning Commission in implementing an optimal integration of uses in the MXD development.

PHASING:

3. Development of the restaurant sites in Land Bay 5, shall not occur prior to the commencement of construction of the commercial retail center.

DESIGN:

4. The design conditions contained herein must be complied with as a condition of the approval of this MXD floating zone amendment regardless of changes in ownership or changes within the development partnership.
5. The architectural design theme of the commercial retail core, restaurant structures, and hotel site must be submitted to, and approved by, the Planning Commission as part of any site plan approval on those parcels.
6. The vision which the applicant has formulated and presented for approval in the MXD application [#R-98-01 (A)] is based upon a gridded street and

¹ The term "applicant" or "developer" as used in this Ordinance includes all present and future owners and developers of the property. These conditions run with the land.

block layout creating pedestrian scaled blocks in the Commercial Retail Core (illustrated as Land Bays 5A and 5B) served by an internal loop collector roadway system that allows independent access to both retail and employment clusters. While the applicant desires to retain flexibility in the site planning and development marketing processes, this basic design configuration shall be a binding condition of this MXD approval.

7. As a corollary to condition 6, the applicant shall comply with the following condition to control the size of individual structures within the commercial core (illustrated as Land Bays 5A and 5B):
 - (i) No single commercial user shall have a footprint greater than 50,000 square feet.
8. The proposed street connections between the employment clusters (illustrated as Land Bays 4, 6A, 6B, and 7) and the commercial uses (illustrated as Land Bays 5A and 5B) shall be maintained in a way that allows for pedestrian access throughout the development of the project. Furthermore, these pedestrian/street links between employment and commercial uses shall be strengthened through the use of wider and generously landscaped walkways. Along any given connection between uses, the number and length of public and private roadway crossings shall be minimized and shall not exceed two (2) in number.
9. The applicant's proposed architectural theme of pedestrian-scaled, street front retail as described in the application for Phase I Amendment, will be maintained throughout the development of the commercial retail and restaurant areas (Land Bay 5).
10. The MXD project shall be subject to the *Frederick County Community Design Guidelines and Development Principles* (adopted July 16, 2002) throughout the Planning Commission's review process.
11. The north and south ends of the retail outlet center, including the restaurant cluster identified on the north side, shall be configured to provide larger public plaza spaces than those illustrated on the concept plan submitted as part of the application for Phase I Amendment.
12. All buildings constructed as part of the retail outlet center shall be articulated architecturally to convey the appearance that finishes and materials are of consistent quality and design among all sides of a structure.

13. Employment clusters (currently identified as Land Bays 6A, 6B, and 7) shall be located and arranged on the proposed MXD site in a manner which does not preclude the future development of infill blocks between the employment and commercial uses.
14. The applicant shall utilize Low Impact Design strategies in the design and construction of the site and buildings including, but not limited to:
 - a) bio-swales/vegetated retention and other naturalized storm water management techniques
 - b) the use of concrete, fair-colored concrete pavers, or permeable pavers shall substitute when possible to minimize asphalt use
 - c) green roof technology – consistent with LEED certification standards
 - d) extensive tree canopy coverage over paved parking and roadway areas
15. The applicant agrees to work with the Planning Commission and staff at the time of the Phase II MXD Plan approval to incorporate green [sic] elements (using LEED certification standards as a reference) into the plan in order to minimize the environmental impacts of the project.
16. At least one of the employment clusters shall be constructed immediately adjacent to, or within, the commercial retail center. No employment cluster (identified as Land Bays 6A, 6B, and 7) shall be located at a greater distance from the retail core than the length of a typical city block (300-400 feet) to facilitate pedestrian connectivity, to provide for shared parking, and to allow for future in-fill development opportunities.
17. Restaurant sites (Land Bay 5A) shall be developed as street front uses offering direct access from sidewalks along Bennett Creek Avenue (extended). Allowances shall be made in the street section for café seating along the sidewalks upon which these restaurant buildings front.

TRANSPORTATION:

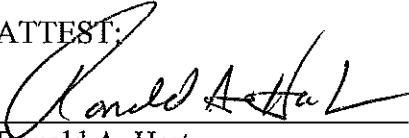
18. Retail uses shall not be occupied until the I-270 northbound slip ramp is open to vehicular traffic.
19. Convenient bicycle and pedestrian access shall be established and maintained in order to fully interconnect the Villages of Urbana PUD with the Urbana Office/Research Center MXD. Such access shall accommodate reasonable attempts to find convenient connections to the ORI lands east of the MXD as well as the Urbana High School site.

20. Parking requirements for the commercial retail and employment uses shall be satisfied through the use of shared and joint parking.
21. An integrated trail/walkway shall be constructed for the use of employees of, and visitors to, employment and commercial uses in the MXD.
22. Applicant shall coordinate with Frederick County's TransIT Division in order to optimize future transit service to the MXD.
23. The applicant shall confirm and demonstrate at the time of preliminary plan approval through a traffic review to the satisfaction of County staff that the traffic impacts, including distribution of trips, resulting from the proposed increase in and reconfiguration of retail square footage and change in use are not greater than the traffic impacts resulting from the proposed use under the 1998 rezoning ordinance (No. 98-18-220).
24. The applicant shall pay to Frederick County the sum of \$150,000 at the time the first building permit is issued under this Ordinance as a contribution toward improvements to the southbound deceleration lane at the I-270/Maryland 80 interchange. The Board of County Commissioners may, in its sole discretion, utilize some or all of the excise tax paid by the applicant in connection with the proposed development toward these improvements.

The conditions included as part of the granting of this Mixed use Development (MXD) floating zone Phase I amendment request are deemed necessary for the health, safety and welfare of the community; are imposed as an integral part of this approval; and are not separable from the decision to grant the requested floating zone classification. If, for any reason, a court of competent jurisdiction finds that any material portion of any of these conditions is substantially invalid or unenforceable, the property shall revert to the previously approved MXD Phase I with the conditions originally approved.

The undersigned hereby certify that this Ordinance was approved and adopted on the
3rd day of December, 2009.

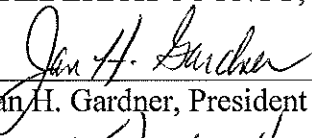
ATTEST:



Ronald A. Hart
County Manager

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

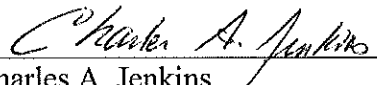
By: _____



Jan H. Gardner, President



Kai J. Hagen



Charles A. Jenkins

Commissioner John L. Thompson, Jr. voted against the proposed MXD. Commissioner
David P. Gray did not vote.

MJC 12/3/09